

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 16417 of 2004****For Approval and Signature:****HON'BLE MR JUSTICE *M.R. SHAH***

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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KLIN INDUSTRIES (AMARNATH) PVT LTD - Petitioner(s)**Versus****PANKAJ SIBAL C/O KALPAKBHAI TRIVEDI - Respondent(s)****Appearance :**

MR SHAKEEL A QURESHI for Petitioner No(s).: 1.

MR PANKAJ R DESAI for Respondent No(s).: 1.

CORAM : HON'BLE MR JUSTICE M.R. SHAH**Date : /08/2005****C.A.V.**

In this petition under Article 226/227 of the Constitution of India, the petitioner management has challenged the legality and validity of the order passed by the Labour Court, Rajkot dated 22nd September 2004 in Recovery Application No. 772 of 1988 in partly allowing the same directing the petitioner to pay an amount of Rs. 40,500 being

arrears of salary for the period from October 1981 to 14th February 1985 under Section 33(C)(2) of The Industrial Disputes Act, 1947 ["the I.D. Act" for short].

2. The respondent workman approached the Labour Court, Rajkot, by way of Recovery Application No. 772 of 1988 for claiming salary/wages, allowances, bonus and commission for the period from October 1981 to September 1984 in all amounting to Rs. 73,700 contending inter alia that he was serving with one Klin Industries (Amarnath) Private Ltd. The said application was opposed by the petitioner. A reply was filed to the Recovery Application denying that the applicant is entitled to commission, bonus etc. It was also submitted that the claim of the applicant for getting the wages at the rate of Rs. 1500 plus Rs. 600 towards allowances etc., is also not acceptable and was disputed. It was also submitted that the application under Section 33(C)(2) is not maintainable at all in view of the fact that there is no pre-existing right in favour of the workman. On appreciation of evidence and considering the fact that lastly the workman was paid the salary of Rs.1000/=, by order dated 22.9.2004 the Labour Court partly allowed the said Recovery Application accepting the claim of the workman with regard to wages for the period from October 1981 to 14th February 1985 only and dismissed the application qua other claims. Being aggrieved and dissatisfied with

the order passed by the Labour Court, Rajkot dated 22.9.2004 in Recovery Application No. 772 of 1988, the petitioner management has preferred the present Special Civil Application under Articles 226/227 of the Constitution of India.

3. Shri Shakeel A. Qureshi, learned advocate appearing on behalf of the petitioner management has vehemently submitted that the application submitted by the respondent workman under Section 33(C)(2) in absence of any pre-existing right was not maintainable and therefore the Labour Court has materially erred in partly allowing the said Recovery Application. It is also further submitted by him that for wages for the period from October 1981 to 14th February 1985 the application came to be filed in the year 1988 i.e., after a period of almost 4 years and therefore on the ground of delay also the Labour Court ought not to have entertained the recovery application. It is also further submitted that in fact the respondent workman was not the workman and/or employee of the petitioner, Klin Industries (Amarnath) Private Limited but he was the employee of one Klin Products (Morbi) and therefore no order with regard to payment of wages could have been passed against the petitioner Klin Industries (Amarnath) Pvt.Ltd.,. Shri Qureshi has relied upon the judgment of this Court in the case of State of Gujarat and Another Vs. Sendhaji S. Thakor, reported in 1991(1) GLH 513; another judgment of this Court in the case of Naranji Peraji

Transport Co. Vs. Ramnikbhai B. Waghela, reported in 1998(1) G.L.H. 88; as well as the Judgment of the Delhi High Court in the case of Jeet Lal Sharma Vs. Presiding Officer, Labour Court, IV th and another, reported in 2000 (85) FLR 268, in support of his submission that workman can file an application under Section 33(C)(2) only when he is entitled to receive money claimed by him on the basis of a pre-existing right and that Labour Court under Section 33(C)(2) of the I.D. Act has no jurisdiction to decide first workman's entitlement and then proceed to exercise the power. Therefore it is requested to allow the present Special Civil Application.

4. Shri Pankaj R. Desai, learned advocate appearing on behalf of the respondent workman has opposed the present Special Civil Application. It is submitted that so far as the contention on behalf of the petitioner that the respondent workman was not the workman and/or employee of the petitioner company is concerned there is no pleading whatsoever with regard to the same except the oral argument. It is also further submitted that the defence with regard to delay in filing the Recovery Application was also not taken by the petitioner before the Labour Court and therefore now it is not open for the petitioner to take such a plea and defence. It is also further submitted that on appreciation of evidence it was found by the Labour Court that the respondent workman was paid the wages at the rate of Rs. 990/- per month

and therefore the claim with regard to wages is rightly accepted by the Labour Court. He has further submitted that in fact so far as other claims for which there is no pre-existing right and/or the same being disputed and/or not within the ambit of Section 33(C)(2) of the I.D. Act, the Labour Court has dismissed the said Recovery Application for those claims and therefore it is requested to dismiss the present Special Civil Application.

5. There is no pleading and/or evidence led in support of the contention on behalf of the petitioner before the Labour Court that the respondent workman was not the employee of the petitioner, Klin Industries (Amarnath) Pvt. Ltd. The said contention was raised only by way of oral arguments. In absence of any pleading against the respondent workman at the time of leading evidence, it is not open for the petitioner to contend and raise a dispute that the respondent workman was not the employee of Klin Industries (Amarnath) Pvt.Ltd. Even otherwise, on appreciation of evidence, the Labour Court has specifically held that the respondent workman was serving with both the companies and therefore the contention on behalf of the petitioner that the respondent No.1 workman was not the workman/employee of the petitioner company cannot be accepted.

6. So far as the aspect of delay in preferring the Recovery Application is concerned, the same was

not raised by the petitioner before the Labour Court and therefore it is not open for the petitioner to raise the said contention now.

7. So far as the judgment and order passed by the Labour Court directing the petitioner to pay Rs. 40,500 towards unpaid wages for the period from October 1981 to 14th February 1985 is concerned, considering the fact that the respondent workman was paid the salary at the rate of Rs. 1,000/= per month and the wages were not paid for the aforesaid period the Labour Court has passed the order directing the petitioner to pay the wages for the aforesaid period by not accepting the claim of the respondent workman to pay the salary at the rate of Rs. 1500 plus Rs. 600/- towards allowances. When the question was with regard to payment of unpaid wages and that when it was found that wages were not paid to the workman, it cannot be said that the application under Section 33(C)(2) is not maintainable on the ground that there is no pre-existing right. Section 33(C)(2) of the I.D. Act reads as under:

"Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which

such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be

decided by such Labour Court as may be specified in this behalf by the appropriate Government (within a period not exceeding 3 months)."

Thus, if the claim of the respondent workman for unpaid wages, which the respondent workman was entitled to receive from the petitioner, was capable of being computed in terms of money, it cannot be said that the application under Section 33(C)(2) of the ID Act was not maintainable. In the facts and circumstances of the case, therefore, the judgments cited at the Bar, as referred to herein above on behalf of the petitioner, are not of any assistance to the petitioner. It is also required to be noted that so far as other claims of the respondent workman with regard to bonus, commission etc., the Labour Court, being conscious that the same are disputed and that the same are not within the scope and ambit of Section 33(C)(2) of the I.D. Act, has rejected the Recovery Application qua those claims.

8. For the reasons stated herein above, the petition fails and is dismissed. Rule is discharged. The ad-interim relief, granted earlier, stands

vacated forthwith. However, there will be no order as to costs.

{ M.R. Shah, J. }

RMR.